

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. 551/94

Thursday, this the 17th day of November, 1994.

CORAM:

HON'BLE MR. JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR. P. V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

P. K. Mohanan
Accountant (Adhoc basis)
Integrated Fisheries Project
Cochin-16

Applicant

By Advocate Mr. Vellayani Sundararaju

vs.

1. Union of India represented by
Secretary to Government
Ministry of Agriculture,
Department of Agriculture,
New Delhi

2. The Director,
Integrated Fisheries Project
Cochin-16

3. K. Chandrasekharan Pillai
Accountant (on Probation),
Integrated Fisheries Project
Cochin-16

Respondents

By Advocate Mr. T.P.M. Ibrahim Khan, SCGSC

O R D E R

P. V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant who is working in the Integrated Fisheries Project, Cochin, challenges four orders:

- i) Annexure A-7 : promoting third respondent as Head Clerk on 30.1.93
 - ii) Annexure A-9 : promoting third respondent as Accountant on 26.3.94
 - iii) Annexure A-1: : Reverting applicant, officiating as Accountant on ad hoc basis, to UDC on 26.3.94
 - iv) Annexure A-11 : Promoting applicant, who stood reverted as UDC, to Head Clerk on ad hoc basis, and posting him to Visakhapatnam on 30.3.94
2. Applicant bases his challenge on the following grounds:
- 1) The DPC which met on 24.3.94 was 'incomplete';

- 2) being senior to Respondent 3, he should be promoted rather than respondent 3;
- 3) as a consequence of (2) above, A-10 and A-11 are not correct;
- 4) the second respondent had shown hostile discrimination by denying him rightful promotion to the higher grades of Head Clerk and Accountant in time;
- 5) the Tribunal had ordered payment of the pay of Accountant to him even though he had been promoted only to the post of Head Clerk;
- 6) the redesignation of the post of Security Assistant as Head Clerk is mala fide;
- 7) that his representation A-12 was not considered.

The last ground above need not be now considered as it is stated that the representation has since been disposed of by reply A-16.

3. The persons other than respondent 3 who were promoted in A-7 and A-9 orders and who would be adversely affected if A-7 and A-9 are quashed are not parties before us. Respondent 3 has since retired from service. The order A-7 was issued based on a DPC which met on 27.1.93. In O.A. 682/93, this Tribunal directed a representation by one T. S. Karthiayani to be considered by respondents, as a result of which the decision of the DPC held on 27.1.93 was ordered to be reviewed as regards promotion to the post of Head Clerk. Therefore, A-7 order is now non-est. A review DPC was held on 17.2.94 which resulted in respondent 3, who was No. 1 in the panel, becoming No. 2 in the panel. The DPC states that it was satisfied that two posts of Head Clerks were available for filling up on 27.1.93. Therefore, the change in position of Respondent 3 in the panel made no difference to his promotion as Head Clerk. The applicant's grievance is that he is entitled to get the post of Head Clerk on a regular basis as he was senior to respondent 3 and was discharging the duties and responsibilities of Accountant, a higher post for three years. But in posts filled up by

selection, a person cannot claim promotion on the basis of seniority alone. We called for and perused the minutes of the DPC dated 17.2.94 and 24.3.94 and the ACRs concerned. The post of Head Clerk is seen to be a selection post, to be filled by promotion from UDCs and Junior Stenographers with five years service in the grade. Respondent 3 holding substantively the post of UDC and having 24 years 10 months service on 27.1.93 is fully qualified to be promoted as Head Clerk. While disposing of Smt. T. S. Karthiayani's representation by letter dated 12.1.94, the government had instructed that since the promotion to the post of Head Clerk was by selection, the Department of Personnel and Training instructions regarding promotion by selection in Group-C posts have to be observed. According to these instructions, all officers whose overall grading, on assessing CRs for the preceding 5 years, is equal to or better than 'Good' should be included in the panel for promotion to the extent of the number of vacancies, and they will be arranged in the order of their inter-se seniority in the lower category without reference to the overall grading obtained by each of them, provided, of course, that each one of them has an overall grading equal to or better than 'good.' Respondent 3 has an overall grading better than 'good', whereas applicant does not. Respondent 3 has been empanelled and promoted whereas applicant has not. There is no irregularity in this.

4. It therefore, follows that respondent 3 has been regularly promoted as Head Clerk and therefore he was "Head Clerk with 10 years combined regular service in the grade of Head Clerk and UDC/Junior Stenographer" which is the requirement under the revised recruitment rules dated 24.1.94 (A-8) for promotion to the post of Accountant,

there being no person with 5 years regular service as Head Clerk. M.A. Gafoor had been promoted as Security Assistant (A-7) by virtue of the recommendation of the DPC dated 27.1.93 and this had not been ordered to be reviewed as it was not a selection post. The post of Security Assistant carries the same scale of pay as that of Head Clerk and has, in fact, been redesignated as Head Clerk with effect from 13.8.93. We accept the submission of the respondents 1 & 2 that this redesignation was intended to give a promotional avenue to the isolated post of Security Assistant. V. Govindan though empanelled as No. 2 by the DPC of 27.1.93 had not been promoted in A-7 order, was again empanelled by the Review DPC dated 17.2.94 with a better position as No. 1 and was recommended to "be allowed retrospective regularisation to the post of Head Clerk, which now he is holding on ad hoc basis, concurrent or senior to that over Shri Chandrasekharan Pillai (Respondent 3) pursuant to the decision of the previous DPC meeting on 27.1.93." We have already noticed that the promotion of Respondent 3 on regular basis as Head Clerk is valid. V. Govindan, being above Respondent 3 in the panel dated 17.2.94, is also to be considered to have been regularly promoted as Head Clerk on the same date or earlier to Respondent 3. A-9 order therefore does not suffer from any infirmity. Applicant could not be promoted regularly as Head Clerk by the DPC dated 17.2.94 as he did not have an overall grading equal to or better than "good." Since he could not be regularly promoted as Head Clerk, he was not eligible for consideration for the promotion as Accountant.

5. We now come to the challenge to Annexure A-10 and A-11. These are only consequential to the orders in A-9 which we have noticed above, have to be upheld. There

are admittedly only three posts of Accountant and by A-9, three persons were regularly promoted as Accountant. Applicant, who was holding the post of Accountant on ad hoc basis, had herefore to be reverted to his substantive post of UDC, which was done by A-10 order. Subsequently, a post of Head Clerk fell vacant on one of the persons in A-9 moving out as Accountant, and applicant was promoted as Head Clerk on an ad hoc basis to that vacancy. The promotion is ad hoc as applicant has not been cleared by a DPC for promotion as Head Clerk. The Recruitment Rules for Accountant as they stood earlier permitted the filling up of the post only by transfer on deputation (A-2). The applicant was not eligible to be promoted as Accountant regularly under these provisions. According to the respondents 1 & 2, the amended recruitment rules came into force only on 24.1.94, specifying a promotional avenue. In the absence of this provision till 24.1.94, the applicant holding the post of Accountant could only be on an ad hoc basis.

6. The post of Accountant seems to have undergone a series of curious transformations in order to bring persons like applicant into the channel for promotion for Accountant. A-2 states:

"The Integrated Fisheries Project, Cochin is having one post of Accountant, one post of Commercial Accountant and ^{one} post of Cost Accountant... Formerly those posts were managed by the SAS Accountant from the organised Accounts Service till 1981 by deputation... The system of deputation has been discontinued, so as to provide promotional avenues to the departmental candidates... Proposal for amending the Recruitment Rules ... was sent to Ministry .. dated 17.9.93 by making provision ... as promotion... The Ministry instead of amending... notification dated 25.7.89 by making the provision of method of Recruitment as transfer on deputation... Again this office had intimated the Ministry that the amended Recruitment Rules ... is against the spirit of all the proposals already made.. Pending orders from the Ministry 3 posts of Head Clerks ...

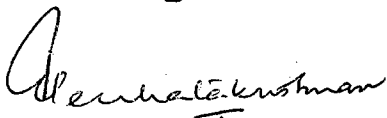
in lieu of 3 posts of Accountants are being operated on ad hoc basis from 1981 onwards... it has been proposed to redesignate the above 3 posts as Accountants. The incumbents holding these posts of Head Clerk (ad hoc basis) are doing the same nature of works as was done by the SAS Accountants on deputation... A proposal for amending the Recruitment Rules... have been furnished to the Ministry... dated 26.9.90 Pending receipt of Ministry's approval... the undersigned has promoted... on ad hoc basis."

That was the position till the notification dated 24.1.94. A-10 and A-11 orders have accordingly to be upheld.

7. There remains the contention of the applicant that the DPC was not validly constituted as one of its members was absent at the meeting. According to the respondents 1 & 2 if the Chairman is present and a majority of the members are present, the proceedings of the DPC are valid. It is not in dispute that these conditions are satisfied by the DPC which met on 24.3.94 and selected persons for empanelment as Accountants. According to respondents 1 & 2, the post of the Fisheries Development Commissioner, (the member who the applicant points out, was absent) was vacant on 24.3.94. We see no infirmity on this ground in the DPC meeting held on 24.3.94.

8. The vacancy of Head Clerk having arisen in Visakhapatnam, applicant has been posted there on promotion. The Supreme Court has clearly indicated that it is for the respondents 1 & 2 to take a decision on transfer and the tribunal would not interfere in the absence of mala fides or a violation of statutory provisions.

9. The challenge to the impugned orders fails. The application is without merit and is dismissed. No costs.
Dated 17th November, 1994.


P. V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

Kmn

LIST OF ANNEXURES

- Annexure A1 : Photo copy of office order No.73/91 dated 20.4.91 of the 2nd respondent to the applicant promoting him as Accountant (Leave vacancy)
- Annexure A2 : Photo copy of office order No.215/90 dated 18.12.90 of the 2nd respondent promoting one N.A. Vasudevan to the post of Accountant.
- Annexure A7 : Photo copy of office order No.8/93 dated 30.1.90 of the 2nd respondent promoting to the 3rd respondent to Head Clerk regularly.
- Annexure A8 : Photo copy of Recruitment Rule (Amended) to the post of Accountant Published notification dated 24.1.94 of the 1st respondent.
- Annexure A9 : Photo copy of office order No.43/94 dated 26.3.94 of the 2nd respondent promoting the 3rd respondent and 2 others as Accountant.
- Annexure A 10 : Photo copy of office order No.44/94 dated 26.3.94 of the 2nd respondent to the applicant reverting the applicant as U.D. Clerk from Accountant. (Adhoc basis)
- Annexure A 11 : Photo copy of office order No.49/94 dated 30.3.94 of the 2nd respondent Promoting the applicant as Head Clerk (adhoc basis)
- Annexure A 12 : True copy of representation of applicant dated 5.4.1994 to the 2nd respondent.
- Annexure A 16 : A true copy of Memo Vide No. IFP/Admn/6-3/84 Vol. II/123 dated 12.4.1994 of the 2nd respondent to the applicant.